



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of WPDES Permit No. WI-0065773-
01-0, Issued to Pinnacle Dairy LLC

Case No. DNR-19-0002

NOTICE OF PREHEARING CONFERENCE AND ORDER FOR PUBLICATION

On April 25, 2018, the Department of Natural Resources (DNR) issued a Wisconsin Pollutant Discharge Elimination System (WPDES) Permit, No. WI-0065773-01-0, to Pinnacle Dairy, LLC. The permit was issued to regulate the discharge from a livestock operation located at N4135 Decatur Sylvester Road, Brodhead, Wisconsin, which would both discharge into Searles Creek within Lower Middle Sugar River Watershed, and the groundwaters of the state, in accordance with the effluent limitations, monitoring requirements, and other conditions on the management and utilization of manure and process wastewater specified in the permit.

On June 22, 2018, the Town of Sylvester, Anna Anderson, Dave Schenk, Lynn Lokken, Karla Albright, Ron Albright, Jodie Zimmerman, and Steve Zimmerman filed a Petition for a Contested Case Hearing with the DNR to review the decision to reissue the WPDES permit to Pinnacle Dairy, LLC, pursuant to Wis. Stat. § 283.63.

By letter dated July 13, 2018, the DNR granted the request for contested case hearing and limited the hearing to the following issues:

1. Whether the Permit is unreasonable because it does not provide for a demonstration of the separation of the base of the storage facility from saturation in accordance with NRCS Standard 313, dated December 2005.
2. Whether the Permit is unreasonable because it does not provide for assurance that the perched water table will be drained in accordance with NRCS Standard 313, dated December 2005.
3. Whether Sections 1.3, 3.5, 3.6, and 3.9 of the Permit are unreasonable because they do not require construction and operation of the manure and wastewater storage facilities in a manner which assures compliance with groundwater protection standards and effluent limitations.
4. Whether Sections 1.1, 1.5, 1.6, 1.7, 2, 3.8, and 3.9 of the WPDES permit, and the approved Nutrient Management Plan are unreasonable because they do not require sampling or monitoring at land application sites.
5. Whether the groundwater monitoring required by the permit is unreasonable in that it is insufficient to determine whether the permittee is complying with applicable groundwater protection standards, and to protect groundwater and drinking water supplies.
6. Whether Sections 1.1, 1.2, 1.3, 1.4, and 1.5 of the Permit are unreasonable because they authorize discharge of manure and process wastewater pollutants which exceed state

water quality standards and cause or contribute to exceedances of state groundwater standards.

7. Whether Section 2.1 of the Permit is unreasonable because it does not indicate whether the facility is eligible for alternative concentration limits and, if so, because it does not include such limits.
8. Whether Sections 1.3, 1.5, 2 and 3 of the Permit, and the approved Nutrient Management Plan, are unreasonable because they do not include a limit on the current proposed number of animal units authorized by the Permit.

On February 18, 2019, the Division of Hearings and Appeals received, for filing, an original request for hearing from the DNR. The parties have conferred and agreed to a date for a prehearing conference.

NOTICE IS HEREBY GIVEN that the State of Wisconsin Division of Hearings and Appeals will hold a prehearing conference on the above-captioned matter pursuant to Wis. Stat. § 227.46(1), Wis. Admin. Code Ch. NR 203, Wis. Admin. Code § NR 2.08(5), and Wis. Admin. Code § NR 2.12, **at 1:30 PM on April 17, 2019**, in Room S148 at the offices of the Division of Hearings and Appeals, 4822 Madison Yards Way, Madison, Wisconsin 53705.

Any person, organization, or governmental unit wishing to become a party to this proceeding must attend the conference in person or by an authorized representative. The purpose of the prehearing conference will be to identify parties to the proceeding, to simplify or clarify the issues which may be contested at the hearing, identify witnesses, discuss the exchange of exhibits, establish a discovery schedule, address any other matters as may aid in the disposition of the action, and schedule a date for the contested case hearing. No testimony will be heard at the prehearing conference. However, a date may be selected for a contested case hearing.

Pursuant to Wis. Admin. Code § NR 203.136, the DNR may modify the permit if the DNR and the Petitioner enter into a signed stipulation to resolve the contested case hearing and the stipulation specifies a change to the permit term or condition that was the subject of the contested case hearing.

If a contested case hearing is scheduled, it will be a Class 1 contested case pursuant to Wis. Stat. § 227.01(3)(a). The procedures set forth in Wis. Stat. § 283.63(1)(b) and the procedures relating to contested cases set forth in Wis. Admin. Code Ch. NR 203 and Ch. NR 2 will be followed. Said procedures will closely resemble those that are normally followed at a trial in State circuit court. All parties are advised that they have the right to seek the aid and assistance of legal counsel and to be represented by legal counsel at the contested case hearing.

The permits, petitions and other information relating to the petitioner are on file and may be inspected and copied at the offices of the Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin, between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, holidays excepted. Copies of documents on file for the applicant may be obtained by writing to the Department of Natural Resources, WPDES Permit Section, P.O. Box 7921, Madison, Wisconsin, 53707-7921. Reasonable costs will be charged for copies of all information excluding public notices and fact sheets.

Pursuant to the Americans With Disabilities Act, reasonable accommodations will be made to any qualified individual upon request. Please call the Division of Hearings and Appeals at (608) 266-3865 with specific information on your request prior to the date of the scheduled prehearing or hearing.

ORDER FOR PUBLICATION

THE DIVISION, THEREFORE, ORDERS:

Pursuant to Wis. Admin. Code § NR 2.08(5), § NR 203.18(3), and § NR 203.02(4)(a), the DNR shall cause a copy of the foregoing Notice to be published once **at least** 30 days before the date of hearing as a class 1 notice under Ch. 985, Stats., in a newspaper of general circulation in the area affected by the discharge. Furthermore, pursuant to Wis. Admin. Code § NR 2.08(5), the DNR shall comply with all of the requirements of Wis. Admin. Code §§ NR 203.18(3), 203.02(4)(b) – (f), and 203.03(4)(a) – (g). Finally, the DNR shall furnish proof of publication to the Division of Hearings and Appeals by **April 10, 2019**.

Dated at Milwaukee, Wisconsin on March 1, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
819 N 6th Street, Room 92
Milwaukee, Wisconsin 53203-1685
Telephone: (414) 227-4781
FAX: (414) 227-3818

By: _____
Kristine M. Kerig
Administrative Law Judge